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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,763	07/25/2001	Mohamed Bakri Assoumani	U0134207	2199

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NEW YORK, NY 10023

EXAMINER
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PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/30/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/830,763	ASSOUMANI, MOHAMED BAKRI	
<b>Examiner</b>	<b>Art Unit</b>		
Helen F. Pratt	1761		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 May 2003 and 09 May 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-34 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-22, 24-34 is/are rejected.
- 7) Claim(s) 23 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### **DETAILED ACTION**

Applicant's amendment to the specification of 5-6-03 could not be entered as no such places are found in the new specification. Applicant should amend the newly entered specification of 5-12-03.

#### ***Specification***

The amendment filed 5-6-03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: no basis is seen for adding "organoleptic property" to the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claims 21- 26 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for particular products, does not reasonably provide enablement for any and all carbohydrate, chocolate and farinaceous products as in claim 24-26. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. The examples do not give basis for claiming an improvement in organoleptic properties in broad food categories as in claims 24-26 when only a few specific examples are cited.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 22, 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auchincloss (WO 98/33508).

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Claims 21, 28, 29 further require a particular amount of the corallinaceae in the composition and method claim 32 requires adding the CO to a food. However, The discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). In developing a food product, properties such as the degree of calcium fortification, which affects the organoleptic characteristics, are important. It appears that the precise ingredients as well as their proportions affect the organoleptic characteristics of the product, and thus are result effective variables which one of ordinary skill in the art would routinely optimize. In addition "up to as in claim 32 reads on zero amounts" and therefore, would not have been expected to affect the characteristics of the product. Therefore, it would have been obvious to use particular amount of corallinaceae (CO) in the claimed composition.

Claim 22 requires that the product contains fat material and that the CO residue is distributed generally in the foodstuff. However, this is a process limitation in a composition claim and is not given weight. Further the reference discloses that emulsions are formed in the manufacture of foods simultaneously or subsequently with an oil phase of a foodstuff and then an emulsion is formed with an aqueous phase. It is seen that the CO is distributed in the foodstuff. Therefore, it would have been obvious to distribute the CO in a foodstuff as disclosed by the reference.

Claim 24 further requires that the foodstuff is a carbohydrate product, claim 25, that it is a chocolate product, claim 26 that it is a farinaceous product and claim 27 that it is a starch based material. The references disclose that the calcium of the reference can be added to bakery products and bread (both carbohydrates and farinaceous, starch-based) and to chocolate as in claims 24 –27 (page 11, lines 23-35). Therefore, it would have been obvious to add CO to the claimed products.

Claim 30 requires that the calcareous residue have a nutritive effect. Certainly the addition of calcium containing product to a food has a nutritive effect and nothing new is seen in this, as that is function of adding a calcium ingredient to food products. The reference discloses that the addition of the calcium product to foods provides a new range of products with calcium fortification (page 11, lines 23-40). Therefore, it would have been obvious to fortify foods with calcium as shown by the reference.

Claim 31 further requires an improved mouth feel without adverse effects on taste or visual appearance. Calcium fortification of food products is well known as is the addition of gums and nothing new is seen in adding a small amount of such a product to

food products. As in *In re Boesch*, it would have been within the skill of the ordinary worker to add an amount which would not have affected the above characteristics. Therefore, it would have been obvious to add enough of a CO product, which would not affect the claimed characteristics of the food product.

The composition has been disclosed as above for claim 32, in claim 21 and is obvious for those reasons and certainly ingesting an edible product is the purpose of food and nothing new is seen in this. Therefore, it would have been obvious to make a composition as claimed and to ingest it.

#### Allowable subject matter

Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ARGUMENTS

Applicant's arguments filed 5-06-03 have been fully considered but they are not persuasive. Applicant argues that in the 103 rejection that the reference is to for therapeutic or nutritive purposes so there is no incentive to say that the reference as an organoleptic effect. However, there is no basis to claim that any and all of the claimed forms of food will have an improved organoleptic effect when only a few examples with particular ingredients are claimed. In addition, when various ingredients are added to a food one expects an improvement or there is not point in adding them.

Applicant's argument as to adding the terms "organoleptic property" to the specification is not persuasive because the dictionary meaning is much broader than the properties of mouthfeel, and creaminess which are cited.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 6-26-03

*H. Pratt*  
HELEN PRATT  
PRIMARY EXAMINER